

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

CWP No.129 of 2001 alongwith CWPs No.343 to 373 of 2001.

Date of decision:16.03.2007.

(For title: please see over-leaf)

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?¹

For the Petitioners: Mr.N.K. Sood, Advocate.

For Respondent No.1.: Mr.Y.P.S. Dhaulta, Advocate.

**For Respondent No.2.: Mr.M.S. Chandel, Advocate
General with Mr.Rajan Dewan,
Additional Advocate General.**

Dev Darshan Sud,J.

All these petitions are being disposed of by a common judgment as they involve common question of law and facts.

These writ petitions have been filed against the judgment and order of the learned Labour Court in proceedings under Section 33-C(2) of the Industrial Disputes Act, 1947. All the petitions were disposed of by the learned Labour Court by a common judgment. The workmen (respondents herein) approached the learned Labour Court on the allegation that they were work-charged employees employed with the employer (petitioner herein).

¹ *Whether the reporters of Local Papers may be allowed to see the judgement?*

- | | | | |
|-----|-----------------------------------|-----|-------------|
| 1. | <u>CWP No.129 of 2001</u> | | |
| | Beas Construction Board | ... | Petitioner |
| | Versus | | |
| | Shankar Ram & Another | ... | Respondents |
| 2. | <u>CWP No.343 of 2001</u> | | |
| | Beas Construction Board | ... | Petitioner |
| | Versus | | |
| | Munshi Ram & Another | ... | Respondents |
| 3. | <u>CWP No.344 of 2001</u> | | |
| | Beas Construction Board | ... | Petitioner |
| | Versus | | |
| | Krishnu Ram & Another | ... | Respondents |
| 4. | <u>CWP No. 345 of 2001</u> | | |
| | Beas Construction Board | ... | Petitioner |
| | Versus | | |
| | Sukh Ram & Another | ... | Respondents |
| 5. | <u>CWP No. 346 of 2001</u> | | |
| | Beas Construction Board | ... | Petitioner |
| | Versus | | |
| | Durga Dass & Another | ... | Respondents |
| 6. | <u>CWP No. 347 of 2001</u> | | |
| | Beas Construction Board | ... | Petitioner |
| | Versus | | |
| | Sant Ram & Another | ... | Respondents |
| 7. | <u>CWP No.348 of 2001</u> | | |
| | Beas Construction Board | ... | Petitioner |
| | Versus | | |
| | Durga Dass & Another | ... | Respondents |
| 8. | <u>CWP No.349 of 2001</u> | | |
| | Beas Construction Board | ... | Petitioner |
| | Versus | | |
| | Smt.Rameshwaru & Others | ... | Respondents |
| 9. | <u>CWP No.350 of 2001</u> | | |
| | Beas Construction Board | ... | Petitioner |
| | Versus | | |
| | Nand Lal & Another | ... | Respondents |
| 10. | <u>CWP No.351 of 2001</u> | | |
| | Beas Construction Board | ... | Petitioner |
| | Versus | | |
| | Roop Lal & Another | ... | Respondents |
| 11. | <u>CWP No.352 of 2001</u> | | |
| | Beas Construction Board | ... | Petitioner |
| | Versus | | |
| | Rattan Lal & Another | ... | Respondents |

12. **CWP No.353 of 2001**
Beas Construction Board ...Petitioner
Versus
Paras Ram & Another ...Respondents
13. **CWP No.354 of 2001**
Beas Construction Board ...Petitioner
Versus
Bangali Ram & Another ...Respondents
14. **CWP No.355 of 2001**
Beas Construction Board ...Petitioner
Versus
Palu Ram & Another ...Respondents
15. **CWP No.356 of 2001**
Beas Construction Board ...Petitioner
Versus
Narain Dass & Another ...Respondents
16. **CWP No.357 of 2001**
Beas Construction Board ...Petitioner
Versus
Daya Ram & Another ...Respondents
17. **CWP No.358 of 2001**
Beas Construction Board ...Petitioner
Versus
Roop Lal & Another ...Respondents
18. **CWP No.359 of 2001**
Beas Construction Board
...Petitioner
Versus
Garja Ram & Another ...Respondents
19. **CWP No.360 of 2001**
Beas Construction Board ...Petitioner
Versus
Polo Ram & Another ...Respondents
20. **CWP No.361 of 2001**
Beas Construction Board ...Petitioner
Versus
Tulsi Ram & Another ...Respondents
21. **CWP No.362 of 2001**
Beas Construction Board ...Petitioner
Versus
Nikka Ram & Another ...Respondents
22. **CWP No.363 of 2001**
Beas Construction Board ...Petitioner
Versus
Nikkru Ram & Another ...Respondent

23. **CWP No.364 of 2001**
Beas Construction Board ...Petitioner
Versus
Duru Ram & Another ...Respondents
24. **CWP No.365 of 2001**
Beas Construction Board ...Petitioner
Versus
Kanshi Ram & Another ...Respondents
- CWP No.366 of 2001**
Beas Construction Board ...Petitioner
Versus
Gokul Ram & Another ...Respondents
25. **CWP No.367 of 2001**
Beas Construction Board ...Petitioner
Versus
Jaindu Ram & Another ...Respondents
26. **CWP No.368 of 2001**
Beas Construction Board ...Petitioner
Versus
Sunder Ram & Another ...Respondents
27. **CWP No.369 of 2001**
Beas Construction Board ...Petitioner
Versus
Bhangi Ram & Another ...Respondents
28. **CWP No.370 of 2001**
Beas Construction Board ...Petitioner
Versus
Chanan Ram & Another ...Respondents
29. **CWP No.371 of 2001**
Beas Construction Board ...Petitioner
Versus
Jamanu Ram & Another ...Respondents
30. **CWP No.372 of 2001**
Beas Construction Board ...Petitioner
Versus
Jaindu Ram & Another ...Respondent
31. **CWP No.373 of 2001**
Beas Construction Board ...Petitioner
Versus
Dhanju Ram & Another ...Respondents

The main grievance of the workmen is that 10% House Rent Allowance was sanctioned by the General Manager, Beas Project, who was at the relevant time the Secretary to the Government of Punjab, Beas Project Administration. The allowance was granted vide letter No.14705-06/BP(A)/3209/61, dated 2-3/6.66. The allegation of the workmen is that this allowance was never paid to them and that this allowance was an amount which was due and payable and as such recoverable under Section 33-C(2) of the Industrial Disputes Act.

The stand adopted by the employer before the learned Labour Court is common in all the petitions. It has been submitted that the petitioners were posted at Slapper where Rent Free Accommodation was available and which was to be allotted on the request to be made by each worker to the House Allotment Committee. It was further submitted that House Rent Allowance was admissible only when an employee applies for a Rent free Accommodation and it is not allotted to him and such fact is corroborated by a non-availability certificate issued by the House Allotment Committee.

The case of the petitioner is that the respondents never applied for allotment of accommodation. Only one Witness, namely, PW-1 Shri Shankar Ram, appeared in support of all the claims. He submitted that the employees were entitled to the

house rent allowance. When the employer stopped payment, they approached this Court. This Court vide order dated 30.12.1986 in **CWP No.863 of 1986, titled: Beas Construction Board vs. Presiding Officer** ordered the payment of House Rent Allowance. It is interesting to note the cross-examination of this witness. He admits that accommodation available at Slapper was surplus. According to him, the Workers' Union gave an application to the respondent either to allot the accommodation or pay House Rent Allowance in lieu of such accommodation. No such application has been produced on record.

RW-1 Shri A.C. Kurian was working as SDO at Bhakra Beas Management Board. He testified that Rent Free Accommodation was available at Slapper, but the petitioners (respondents herein) had never applied for allotment of such accommodation. He further states that it was necessary that an application should have been made for allotment of Rent Free Accommodation. He also states that in case of non-availability of accommodation, a certificate is issued by the House Allotment Committee and only then House Rent Allowance is paid to the workmen.

RW-2 is Shri Ravinder Nath, who is Junior Engineer with Bhakra Beas Management Board, who also states that payment of House Rent Allowance is subject to the non-availability of accommodation

which fact has to be testified by the House Allotment Committee. This in entirety is the evidence.

The learned Labour Court, has held that although witnesses for the petitioners before the learned trial Court have admitted that surplus accommodation was available, yet there was no record to show that the Union had given an application on behalf of the workmen for allotment of the accommodation or by any individual workman. The Court concludes:

"I may mention that PW-1 who appeared on behalf of the petitioner has admitted that surplus accommodation was available at Slapper. He however, has mentioned that the union had given an application to the respondent either to allot accommodation or to give House Rent Allowance, but no such application either by the individual petitioner or by the Union or the members of the employees is available on the record. So it seems that none of the petitioner applied for rent free accommodation at Slapper".

The claim of the respondents has been allowed by the learned Labour court on the basis of note-4 which has been made in the letter No.14705-06/BP(A)/3209/61, dated 2-3/6.66, from the General Manager, Beas Project, Talwara Township addressed to

the Chief Engineer, Beas Sutlej Link Project, Sundernagar and Chief Engineer, Construction Beas Dam Talwara, etc. Clause Note-4 of the letter is in the following terms:-

"For grant of house rent allowance the issue of non-allotment of House Certificate by the Secy.House Allotment Committee should be enough as per practice followed at Bhakra".

According to the learned Labour Court, non-availability and non-allotment of rent free accommodation are two different issues and that the note casts a duty on the petitioner to allot houses to each individual workman. The learned Court concludes that it was the duty of the employer to have offered the accommodation and there was no duty cast on the workmen to have applied for it.

I have heard the learned counsel for the parties and have gone through the record. Learned counsel appearing for the petitioner has urged that the non-allotment certificate by the Secretary of the House Allotment Committee was required before grant of House Rent Allowance. In the absence of such a certificate no allowance was payable. Submission of the learned counsel is that a workman has to approach the employer for allotment of rent free accommodation and it is not the duty of the employer to contact

each workman individually and request/ask him to avail the facility of rent free accommodation.

Learned counsel for the respondents submits that the judgment of the learned Labour Court is in accordance with law. He has referred to a Division Bench decision of this Court in ***Beas Construction Board vs. Presiding Officer, Labour Court and Another, 1987 Sim.L.C., 171*** and submitted that the grant of House Rent Allowance is mandatory and the question involved in the present writ petition stands concluded by the judgment of this Court.

I am unable to accept the reasoning of the learned Labour Court or that of the learned counsel appearing for the respondents. In the Division Bench judgment cited before me, the facts noticed were that the respondents-workmen were not provided with rent free accommodation nor any house rent was granted to them. It was not a case where such accommodation was available and a mandatory duty cast upon the employer to offer such accommodation to the workmen. The facts in controversy were noticed by this Court in the following terms:

"2.The claim of the respondent-workman in the said proceeding was that he was a work charged employee of the Beas Satluj Link Project (hereinafter referred to as "the management") at Sundernagar, that the work-charged employees were entitled

to the grant of rent free accommodation or 10% house rent allowance in lieu thereof (unless tentage accommodation was provided, in which case, the house rent allowance would be admissible at the rate of 7^{1/2}%), that he was not provided with rent free accommodation nor any house rent allowance was paid to him for the period from January 1978 to March 1984 at the rate of 10% although it was due to him and was actually paid to him earlier and that he be awarded the sum Rs.1,179.15 P. being the arrears of house rent allowance for the aforesaid period at the rate of 10% admissible to him. The Labour Court upheld the claim of the respondent-workman on the basis of the orders Annexure P-5 and P-6 dated September 27, 1965 and June 2/3, 1966, respectively, and passed an order directing the management to pay within a period of two months the arrears of house rent allowance as claimed by him. Hence the present writ petition".

Accordingly this Court has held that either rent free accommodation has to be allotted or House Rent Allowance was to be paid to the workmen in case no accommodation was available. Admittedly, in the present case, the workmen have themselves admitted on

oath, which fact is also supported by the evidence of the Petitioner-Management, that there was rent free accommodation available at Slapper where the workmen were discharging their duties. It is also an admitted fact that no application was produced which was made either individually by every workman or by Union on their behalf. The learned Labour Court having come to the conclusion that no such request or demand was made by the workmen, it seems strange that the claim of the workmen has been allowed solely on the basis that it was for the Management to have offered the accommodation.

The findings of the Tribunal being categorical that neither any application was made nor was an attempt made to ask for allotment of accommodation, it becomes difficult to hold that merely because a provision exists for grant of house rent allowance, it has to be granted.

The mere fact that the workman does not approach his employer for allotment of accommodation should not be a factor to impose additional burden on the employer. Surely, it is the duty of the workman to approach the employer and in case of refusal, the entitlement of house rent is to be considered. The provision is not a bonanza for the workmen. As I have observed above, additional economic burden cannot be imposed upon the employer where he is called upon to construct accommodation for his

employees/workmen and allow the same to remain un-utilize and at the same time pay House Rent Allowance. Any other interpretation on the note would lead to absurdity. Accommodation can be allotted only if it is available. No allotment can be made when there is no availability. For this purpose an overt act is required as to who should initiate this process, according to common sense would be the employee and not the employer.

Note-4 extracted above is clear. It says that for grant of House Rent Allowance the issue of non-allotment of House Certificate by the Secretary of the Committee is sufficient evidence. Surely, this is not to suggest that the Secretary of the House Allotment Committee should visit each worker individually requesting him to take rent free accommodation or to get a certificate from the Committee testifying the fact that no house was allotted to the individual workman. It is also against common sense/reason that an employer, who has spent huge sums for constructing accommodation for the workmen, should allow the same to be unoccupied and also pay House Rent allowance to its workmen.

Learned counsel for the petitioner has placed reliance on **Director, Central Plantation Crops Research Institute, Kesaragod and others vs. M.Purushothaman and others, AIR 1994 SC 2541**, in support of his contention.

The brief facts relevant for the controversy noticed by their Lordships:-

"1. The short question that falls for consideration in this appeal is whether the employees of the appellant-organization, viz., the Central Plantation Crops Research Institute are entitled to House Rent Allowance (HRA) although they are offered official accommodation and they refuse to occupy the same.

"2. The respondent-employees are occupying various posts in the appellant-organization. Orders allotting official quarters they were entitled to were passed by the appellant-organization. However, the employees declined to occupy the same for one reason or the other. On their refusal to occupy the quarters, the appellant issued orders denying them the benefit of HRA which they were till then drawing. The respondent-employees challenged these orders before the High Court. Their writ petitions were subsequently transferred to the Central Administrative Tribunal and the Tribunal by the impugned common decision dated 5.5.1988, held that the employees cannot be compelled to occupy the official quarters and hence on their refusal to occupy the same, they cannot be denied the benefit of

the HRA. To arrive at this conclusion the Tribunal has given two reasons. The first is that under the relevant provisions, it is only those employees who had applied for official accommodation and who refused to occupy the same are liable to forfeit the benefit of the HRA and not others. The second reason given by the Tribunal is that the HRA is a part of wages and no deduction from the wages can be made merely on account of the refusal to accept the accommodation".

Their Lordships, therefore, held that:-

"5. It is clear from the aforesaid provisions that paragraphs 4(a)(i) and (ii) lay down the procedure for making application for accommodation. Paragraph 4(b)(i) lays down the consequences on refusal to accept the accommodation when offered. There is no doubt that paragraphs 4(a)(i) and (ii) state that an application has to be made to secure accommodation. However, that does not mean that Government or the organization such as the appellant-organisation to which the said provisions apply cannot on their

own offer accommodation to the employees. Hence the reason given by the Tribunal that it is only if the employee applies for such accommodation and he refuses to accept the same when offered that he would be disentitled to the HRA, is not correct. It must be remembered in this connection that the Government or the organisation of the kind of the appellant spends huge public funds for constructing quarters for their employees both for the convenience of the management as well as of the employees. The investment thus made in constructing and maintaining the quarters will be a waste if they are to lie unoccupied. The HRA is not a matter of right. It is in lieu of the accommodation not made available to the employees. This being the case, it follows that whenever the accommodation is offered the employees have either to accept it or to forfeit the HRA. The management cannot be saddled with double liability, viz., to construct and maintain the quarters as well as to pay the HRA. This is the rationale of the provisions of paragraph 4 of the said Government Office Memorandum".

I do not find that the Rules in the present case are any different. In these circumstances, it is difficult to accept the contention of the respondents which is accordingly, rejected.

Learned counsel for the petitioner has urged that notices under Section 19(2) and 9-A of the Industrial Disputes Act had been served on the respondents and their Union terminating the agreements entered into between them. According to the learned counsel, the mandatory statutory conditions having been complied with, they were not bound to pay any house rent allowance in terms of the settlements arrived at between them. The notice has been annexed to the writ petition as Annexure P-8. In terms it states that this was produced and proved before the learned Labour Court as annexure-RC although there was no foundation in the pleadings, but at the same time, there was no opposition on behalf of the workmen to the notice being admitted and proved. The notice is in detail dealing with the manner in which the accommodation is to be allotted. No reply has been filed by the respondents to the writ petition accepting or denying this averment. The writ petition was filed in this Court on 14th March, 2001 and notices issued on the 19th March, 2001. For a period of more than six years no reply has been filed. In these circumstances, the factual averments made by the petitioner have to be accepted

as they are. The Labour Court has held that the notices will have no validity as this Court has already passed orders regarding payment of House Rent allowance. This is not the correct approach as the notices were never subject matter of adjudication in the previous proceedings. Since the plea of the petitioner has gone uncontested, the notices would have their own statutory effect. However, as I have already held that the interpretation placed by the learned Labour Court on the Note-4 is not correct. The matter is not being considered any further.

Therefore, the judgment of the learned Labour Court passed in Reference Petition Nos.138 to 141, 143 to 146, 161 to 164, 166, 167, 190 to 204 of 1997 and 64 to 66 of 1998 quashed and set aside. There shall be no order as to costs.

In the facts and circumstances, the writ petition is accepted. The order of the learned Labour Court is quashed and set aside. There shall be no order as to costs.

All interim orders shall stand vacated. The petitioner is held entitled to the refund of the amount deposited in the Registry, in each case, pursuant to the orders passed by this Court on 31.12.2002.

March 16, 2007.
(aks)

(Dev Darshan Sud)
Judge.

